

1 JOSEPH P. RUSSONIELLO (SBN 44332)

United States Attorney

2 JOANN M. SWANSON (SBN 88143)

Chief, Civil Division

3 MICHAEL T. PYLE (SBN 172954)

Assistant United States Attorney

4 U.S. Attorney's Office/Civil Division
5 450 Golden Gate Avenue, 10th Floor
San Francisco, California 94102-3495
6 Telephone: (415) 436-7322
Facsimile: (415) 436-6748
7 E-mail: michael.t.pyle@usdoj.gov

8 Attorneys for Defendant Donald C. Winter

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 PAULA HORVATH,) No. C 07-4952 JSW
13 Plaintiff,) **ANSWER OF DEFENDANT DONALD**
14 v.) **C. WINTER**
15 DONALD C. WINTER, Secretary,)
Department of the Navy,)
16 Defendant.)
17 _____)

18 Defendant Donald C. Winter, by and through his counsel, hereby admits, denies, alleges
19 and otherwise responds to Plaintiff Pauline Horvath's Amended Complaint ("Complaint") as
20 follows (with all references to page and line numbers corresponding to Plaintiff's Complaint
21 filed on May 2, 2008):

22 As an initial matter, Defendant denies that there was any "blacklist" or other document
23 used to retaliate against employees as a result of prior Equal Employment Opportunity ("EEO")
24 activity.

25 Page 1, line 21 through 23: This allegation requires no response. To the extent that a
26 response is deemed necessary, defendant denies each and every allegation in this portion of the
27

28 C 07-4952 JSW
ANSWER OF DEFENDANT DONALD C. WINTER

1 Complaint.

2 Page 1, line 24 through page 2, line 4: Defendant denies each and every allegation in this
3 portion of the Complaint.

4 Page 2, line 5 through page 3, line 9: Defendant lacks information sufficient to form an
5 answer regarding this portion of the Complaint and, on that basis, denies each and every
6 allegation in this portion of the Complaint.

7 Page 3, line 10 though line 15: Defendant admits the allegations in this portion of the
8 Complaint.

9 Page 3, line 16 through line 21: Defendant admits that plaintiff filed an informal EEO
10 complaint in 1986; except as so expressly admitted, defendant lacks information sufficient to
11 form an answer regarding this portion of the Complaint and, on that basis, denies each and every
12 allegation in this portion of the Complaint.

13 Page 3, line 22 through page 6, line 24: Defendant lacks information sufficient to form an
14 answer regarding this portion of the Complaint and, on that basis, denies each and every
15 allegation in this portion of the Complaint.

16 Page 6 line 25 through page 7 line 7: Defendant admits that plaintiff's last day of work
17 was in June 1992; except as so expressly admitted, defendant lacks information sufficient to form
18 an answer regarding this portion of the Complaint and, on that basis, denies each and every
19 allegation in this portion of the Complaint.

20 Page 7 line 8 through page 12 line 26: Defendant lacks information sufficient to form an
21 answer regarding this portion of the Complaint and, on that basis, denies each and every
22 allegation in this portion of the Complaint.

23 Page 13 line 1 through 6: This allegation requires no response. To the extent that a
24 response is deemed necessary, defendant denies each and every allegation in this portion of the
25 Complaint.

26 Defendant denies that plaintiff is entitled to the relief requested or to any relief
27 whatsoever. Defendant further denies each and every allegation of the Complaint that has not
28

1 been admitted, denied, or otherwise qualified above.

2 In further answer to the Complaint and as separate affirmative defenses, defendant alleges
3 as follows:

4 **FIRST AFFIRMATIVE DEFENSE**

5 The court lacks subject matter jurisdiction to consider Plaintiff's claim.

6 **SECOND AFFIRMATIVE DEFENSE**

7 Plaintiff's complaint fails to state a claim upon which relief can be granted.

8 **THIRD AFFIRMATIVE DEFENSE**

9 Plaintiff failed to exhaust her administrative remedies.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 All actions being challenged by Plaintiff were taken for legitimate, non-discriminatory,
12 non-retaliatory and non-pretextual reasons. Defendant alleges that there was never a "blacklist"
13 or other document used to retaliate against Plaintiff for any prior EEO activity. Defendant
14 further alleges that Plaintiff was not retaliated against for any prior EEO activity.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 Some or all of Plaintiff's claims are barred by the applicable statute of limitations.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 Plaintiff cannot establish a prima facie case of discrimination or reprisal.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are barred by the doctrines of accord and satisfaction based on her
23 acceptance of an offer of judgment in prior litigation.

24 //

25 //

26 //

27 //

28 C 07-4952 JSW
ANSWER OF DEFENDANT DONALD C. WINTER

1 WHEREFORE, for the reasons set forth above, defendant asserts that this action
2 should be dismissed and judgment entered in his favor, with appropriate costs awarded.
3
4

5 Respectfully submitted,
6
7

8 JOSEPH P. RUSSONIELLO
9 United States Attorney
10
11

12 Dated: May 15, 2008
13
14

15 /s/
16 MICHAEL T. PYLE
17 Assistant United States Attorney
18 Attorneys for Defendant Donald C. Winter
19
20
21
22
23
24
25
26
27
28

C 07-4952 JSW
ANSWER OF DEFENDANT DONALD C. WINTER